IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: JUDGMENT ::

Oriental Insurance Co. Ltd. Vs. Smt. Sukhi Kanwar & Ors.

S.B. CIVIL MISC. APPEAL NO.513/1994.

Against the judgment and award dated 10.06.1994 made by the Motor Accidents Claims Tribunal, Bhilwara in M.A.C.T. Case No.204/1992 (213/1988).

Date of Order :::: 19.10.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Santosh Choudhary for
Mr. Anil Bachhawat, for the appellant.
Mr. Jagdish Vyas, for the respondent No.6.

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BY THE COURT:

This appeal has been preferred by the insurer of the vehicle involved in accident against the award dated 10.06.1994 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.204/1992 (213/1988) whereby the Tribunal has awarded compensation in the sum of Rs.1,11,000/- together with interest @ 12% per annum to the mother, wife and children of the accident victim Bhanwar Singh (28 years).

Briefly put, the facts of the case are that the claimants submitted the claim application on 29.11.1988 with the submissions that the deceased Bhanwar Singh was khalasi on a truck bearing registration No. RSY 6539; on 08.06.1988 at about 4.45 p.m. while proceeding on Bhilwara to Hamirgarh road, near Swaroopganj circle the said truck RSY 6539 attempted to overtake another truck bearing registration No. DIG 3605; the truck in front suddenly applied the brakes and the truck following bumped into its rear; the accident caused extensive damage to the khalasi side of the truck RSY 6539; one person sitting in the damaged truck died on the spot whereas its khalasi Bhanwar Singh died in hospital due to grievous injuries sustained in the accident. The claimants claimed compensation against the driver, owner and insurer of the truck RSY 6539 with the submissions that the accident occurred for its driver attempting to overtake the other truck rashly and negligently that caused fatal injuries to Bhanwar Singh. For quantification, the claimants alleged monthly income of the deceased at Rs.700/- and loss of contribution at Rs.525/- per month and stating other losses claimed compensation in the sum of Rs.2,55,600/-. The claim application was contested by the insurer of the truck, present appellant, with general denial of the claim averments and it was submitted that the accident occurred for the fault of the driver of

truck DIG 3605 and the persons related to the said truck were necessary parties and in their absence the claim application was not competent. It was also submitted that the claimants have alleged the deceased to be a khalasi on the truck in question and he being a workman who expired during the course of employment, application for compensation ought to have been made before the Workmen's Compensation Commissioner.

On the pleadings of the parties, following issues were framed by the Tribunal :-

> "1- आया कि मृतक भंवरसिंह ट्रक आर एस वाई 6539 पर खलासी था और दिनांक 8/6/88 को ट्रक आर.एस.वाई 6539 के चालक द्वारा वाहन को गफलत, लापरवाही व तेज रफ्तार से चलाने के कारण दुर्घटना हुई जिसमें उक्त ट्रक के खलासी भंवरसिंह की मृत्यु हो गई ?
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> 2- आया कि मृतक की वक्त दुर्घटना उम्र 28 वर्ष थी ?
>
> 3- आया कि मृतक की आय 700/- रू० प्रति माह थी ?
>
> 4- आया कि क्लेम प्रार्थना पत्र न्यायालय को सुनने का अधिकार नहीं है ?
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> 5- आया कि आवेदकगण-विपक्षीगण से क्षति पूर्ति राशि प्राप्त करने के अधिकारी है यदि हो, तो कितनी राशि किस-2 विपक्षी से ?
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> 6- अन्य अनुतोष ?"

In evidence, the claimants examined claimant No.2 Girja Kanwar as AW-1 and produced FIR Ex.1, Charge-sheet Ex.2, Site Plan Ex.3, Site Inspection Memo Ex.4 and

Postmortem Report Ex.5. Significantly, no evidence at all was adduced on behalf of the non-applicants.

With reference to the material available on record the Tribunal found that the accident was caused by rash and negligent driving of the truck in question and the deceased was travelling in the same as khalasi. The Tribunal noticed that no rebuttal evidence was led by the non-applicants and even the driver of the vehicle was not produced in evidence. The Tribunal put an estimate on the income of the deceased at Rs.500/- per month and assessed pecuniary loss at Rs.1,00,000/- and adding further amount towards non-pecuniary loss, made the award in the sum of Rs.1,11,000/- and also allowed interest @ 12% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellant-insurer has put forward the contentions that the Tribunal has erred in arriving at the finding about negligence of the truck driver merely on the basis of challan papers without there being any eye-witness produced; and that the capacity of the deceased in the vehicle in question as a khalasi has not been established and the insurer was required to be exonerated.

Having given a thoughtful consideration to the submissions made on behalf of the appellant and having examined the entire record, this Court is clearly of opinion that the present appeal remains totally devoid of substance and

deserves to be dismissed.

The appellants are not correct in their assertion that the challan papers including site inspection memo prepared by the police have no evidentiary value or that the same cannot be taken into account for the purpose of considering the situation at the site of accident. The memo prepared by the investigating agency in discharge of its official duties cannot be discarded as a waste paper particularly when examining the circumstances surrounding the scene of accident and the marks available at the site after the incident.

It is noticed in the site inspection memo that the truck in question has gone down to its right hand side to a distance of about 38 ft. much down the road and its khalasi side, i.e. the left hand side received substantial damage. Obviously, the truck was being driven in a rash and uncontrolled manner and it either rammed into the truck it was following or got sliced from the said truck while attempting to overtake. In either event, negligence and omission of care on the part of driver of the truck deceased was travelling in appears more probable. The distance travelled by the truck in question after the impact also shows that the truck was in a brisk speed. It is true that no eye-witness to the accident has been produced by the claimants but then, the relevant witness, i.e. the driver of the truck involved in accident, has not been produced in the evidence by the non-

applicants either and on that count an adverse inference is definitely required to be drawn against the non-applicants. Nothing has been brought on record to suggest if there was any fault or mistake on the part of the other truck driver like sudden application of brakes or sudden severing to its right hand side.

Cumulative effect of the material made available on record by the claimants and as omitted to be placed on record by the non-applicants is that the conclusion reached by the Tribunal on the fault of the truck driver, non-applicant No.1 for responsibility towards accident remains a valid and correct finding of fact and calls for no interference.

So far the liability of the insurer is concerned, the fact remains the appellant-insurer has consciously chosen not to lead any evidence at all (vide order sheet dated 02.06.1994). The submissions sought to be made in this appeal questioning the capacity of the deceased as khalasi on the truck in question was not specifically put in contention before the Tribunal and on the contrary the plea taken was that because of his being a khalasi, the matter ought to have been taken to the Workmen's Compensation Commissioner; though such baseless plea was rightly not pressed as noticed by the Tribunal while discussing issue No.4. Apart from not taking specific plea disputing the capacity of the deceased, the non-applicants have not even put specific challenge to the assertion made by his wife in her

statement and then no evidence has been led by the non-applicants. Challenge to the capacity of the deceased in the truck in question also remains hollow and baseless.

A suggestion has been made in the memo of appeal about limited liability of the insurer but again no evidence having been led by the insurer, such submissions cannot be countenanced in the present appeal. No other point survives for consideration.

In the aforesaid view of the matter, this appeal fails and is, therefore, dismissed. However, in the circumstances of the case, there shall be no orders as to costs.

(DINESH MAHESHWARI), J.

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